



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,994	09/18/2006	Marc Peuker	59607US005	3030
32692 7590 07/12/2010 3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427			EXAMINER PAGAN, JENINE MARIE	
			ART UNIT	PAPER NUMBER
			3728	
			NOTIFICATION DATE	DELIVERY MODE
			07/12/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

LegalUSDocketing@mmm.com
LegalDocketing@mmm.com

Office Action Summary	Application No. 10/598,994	Applicant(s) PEUKER ET AL.	
	Examiner JENINE M. PAGAN	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 55-58, 60-64 and 66-92 is/are pending in the application.
- 4a) Of the above claim(s) 66-72, 74-83 and 85 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 55-58, 60-64, 73, 84 and 86-92 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. This Office Action acknowledges the applicant's amendment filed on 5/3/2010.

Claims 55-58 and 60-64 and 66-92 are pending in the application. Claims 1-54, 59 and 65 are cancelled. Claims 66-72, 74-83 and 85 are withdrawn from consideration.

Claim Rejections - 35 USC § 103

Claim 55: McGarrigle discloses a package assembly for storing and/or delivering substances such as dental substances, comprising at least one container 10 comprising a base 12 and a lid 14; and at least one hinge 16/18 connecting the base 12 and the lid 14; wherein the base 12 and the lid 14 comprise first 14a and

second 26/30 levers, and the container 10 can be opened by moving the first and second levers 14a/26/30 towards each other, and wherein the container 10 contains at least one dental substance and is sealed with a breakable seal.

(When the lid is closed down on the base the container is sealed and when the lid is removed from the base the seal is broken.)

McGarrigle does not specifically disclose the seal is a tamper-evident seal. However Petrick disclose a tamper-evident seal 33/36.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply a tamper-evident seal to the sides of the container of McGarrigle as taught by Petrick, since Petrick suggests at Col 6:35-44 and Fig. 2A that such a modification would alert the user to the fact that the container has been previously opened.

Claim 56: McGarrigle discloses the hinge 16/18 is provided between the first 14a and second 26/30 lever.

Claim 57: McGarrigle discloses the container 10 is adapted for air-tight closing of the container with the seal.

(When the lid closes down on the base the container is closed preventing air from entering the container and is sealed as seen in Figure 3.)

Claim 58: McGarrigle discloses an end of the second lever 26/30 is bent in a direction away from the first lever 14a. (Fig. 3)

Claim 61: McGarrigle discloses the base 12 and/or the lid 14 are manufactured with an opening for filling the container 10 after manufacturing and for sealing with a seal.

(When the container is manufactured and filled with substance the lid closes down on the base and the container is sealed together as seen in Figure 3)

Claim 62: McGarrigle discloses the container 10 is sealed with a seal at a first end.

(When the lid closes down on the base the container is sealed together as seen in Figure 3)

Claim 63: McGarrigle discloses the seal is a part of the base.

Claim 64: McGarrigle discloses the seal is a part of the lid.

Claim 84: McGarrigle discloses the claimed invention as stated above in claim 55 except the package assembly exhibits an orange color, to filter blue light.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the package to exhibit an orange color to filter blue light since it was known in the pharmaceutical art that it is common to provide the color to protect the substance inside of the container.

Claim 86: McGarrigle discloses the claimed invention as stated above in claim 55 except the lid and/or container comprise a self-cleaning or low energy surface.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to the lid and/or container comprise a self-cleaning or low energy surface, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416

Claim 90: McGarrigle discloses the substance comprises at least one of the materials selected from the group consisting of bonding materials.

- 3. Claims 60 and 91-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGarrigle US 5,249,963 in view of Petrick et al. US 6,343,695 B1 and further in view of Scharf US 4,991,759.**

Claim 60: McGarrigle/Petrick discloses the claimed invention as stated above but they do not specifically disclose the base, the lid and the hinge are integrally molded.

However Scharf discloses a base 16, a lid 14 and a hinge 20 are integrally molded. (Col 3:16-23)

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the base, lid and hinge integrally molded, since it has been held that forming the cover, base and hinge in one piece an article which has formerly been formed in three pieces and put together involves only routine skill in the art. Howard v. Detroit Stove Works, 150 U.S. 164 (1893).

Claim 91: McGarrigle discloses the claimed invention as stated above in claim 55 but it does not specifically disclose the breakable seal can be broken by pushing the lid in a direction substantially towards the container.

However Scharf discloses a breakable seal can be broken by pushing the lid in a direction substantially towards the container.

When the tip of the cover 14 (at surface 38) reaches the top of the container 16, it creates a seal. That seal is later broken when the lid is pressed down further on to the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the breakable seal be broken by pushing the lid in a direction substantially towards the container as taught by Scharf, since Scharf suggests at Fig 2 and 3 that such a modification would provide an alternate way of breaking the sealed container.

Claim 92: Scharf further discloses an appendage 38 is created at the breakable seal during activation and provides a friction fit between the lid 14 and second end of the container 16 when the lid 14 is pushed onto the container 16. (Col 3:66-4:7)

4. **Claim 73 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGarrigle US 5,249,963 in view of Petrick et al. US 6,343,695 B1 and further in view of Discko, Jr. US 5,660,273.**

Claim 73: McGarrigle/Petrick discloses the claimed invention as stated above but they do not specifically disclose the package comprises a disposable applicator.

However Discko discloses a package 30 comprising a disposable applicator 20.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the package of McGarrigle include a disposable applicator as taught by Discko, since Discko states at column 3 line 50-60 that such a modification would allow the user to use the material such as bonding agents located inside of the container.

5. Claims 87 and 89 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGarrigle US 5,249,963 in view of Petrck et al. US 6,343,695 B1.

Claim 87: McGarrigle discloses a method for providing dental substances, comprising the steps of providing a package assembly, comprising at least one container 10 comprising a base 12 and a lid 14 and at least one hinge 16/18 connecting the base 12 and the lid 14, wherein the base 12 and the lid 14 comprise first 14a and second levers 26/30, and wherein the container 10 can be opened by moving the first and second levers 14a/26/30 towards each other, and wherein the container 10 contains at least one dental substance and is sealed with a breakable seal, and opening the closed package assembly by pressing the two levers 14a/26/30 together.

(When the lid is closed down on the base the container is sealed and when the lid is removed from the base the seal is broken.)

McGarrigle does not specifically disclose the seal is a tamper-evident seal. However Petrick disclose a tamper-evident seal 33/36.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply a tamper-evident seal to the sides of the container of McGarrigle as taught by Petrick, since Petrick suggests at Col 6:35-44 and Fig. 2A that such a modification would alert the user to the fact that the container has been previously opened.

Claim 89: McGarrigle discloses a method of closing the container 10 by pressing the lid 14 onto the container 10.

- 6. Claim 88 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGarrigle US 5,249,963 in view of Petrick et al. US 6,343,695 B1 and further in view of Scharf US 4,991,759.**

Claim 88: McGarrigle/Petrick discloses the claimed invention as stated above but they do not specifically disclose pressing the lid in substantially the direction of the container for breaking the seal.

However Scharf discloses pressing the lid 14 in substantially the direction of the container 16 for breaking the seal.

When the tip of the cover 14 (at surface 38) reaches the top of the container 16, it creates a seal. That seal is later broken when the lid is pressed down further on to the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the breakable seal be broken by pushing the lid in a direction substantially towards the container as taught by Scharf, since Scharf suggests at Fig 2 and 3 that such a modification would provide an alternate way of breaking the sealed container.

It would be rendered obvious by the normal use of the container to perform the above method of use. Regarding claims 87-89, under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986). MPEP 2112.02

Response to Arguments

7. Applicant's arguments with respect to claims 55-58, 60-64, 73, 84 and 86-92 have been considered but are moot in view of the new ground(s) of rejection. However in response to the Applicants argument that the reference of McGarrigle does not disclose a breakable seal, in accordance with MPEP 2111.01, during examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). Therefore, as stated in the previous Office Action and the present Office

Art Unit: 3728

Action when the lid of McGarrigle is closed down on the base, the container is sealed and when the lid is removed from the base, the seal is broken.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENINE M. PAGAN whose telephone number is (571)270-3216. The examiner can normally be reached on Monday - Thursday, 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3728

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mickey Yu/
Supervisory Patent Examiner, Art Unit 3728

/Jenine M Pagan/
Examiner, Art Unit 3728